IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11603 of 2004
with
SPECIAL CIVIL APPLICATION No 11875 of 2004
with
Special Civil Application No. 11859 of 2004
with
Special Civil Application No. 12318 of 2004
with
Special Civil Application No. 12333 of 2004
with
Special Civil Application No. 12334 of 2004
with
Special Civil Application No. 12336 of 2004
with
Special Civil Application No. 12340 of 2004
with
Special Civil Application No. 12343 of 2004
with
Special Civil Application No. 15467 of 2004
with
Special Civil Application No. 15774 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAGAN ALIAS MANGAJI UKAJI THAKOR & Ors.

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner/s.

Mr. AD Oza, GOVERNMENT PLEADER

for Respondent State.

Mr. Daksesh Mehta for respondents No. 5 to 8.

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 20/01/2005

COMMON JUDGEMENT

Rule. Shri AD Oza, learned Government Pleader waives service of Rule on behalf of the respondents. With the consent of parties, all the petitions are taken up for Final Hearing and as common questions of law and facts arise, all these petitions are decided by this common judgment.

2. In all these petitions, the respective petitioners have challenged the legality and validity of the judgment and order passed by the Secretary, Revenue Department (Appeals), State of Gujarat dated 10th December 2002 in Revision Application No. 24 of 2001 in quashing and setting aside the order dated 21.1.1994, passed by the Collector, Ahmedabad; order dated 24th March 1995 passed by the Deputy Collector, Viramgam Prant; order dated 4.1.1999 passed by the Collector, Ahmedabad in Appeal No. 27/1998; order dated 30th June 2000 passed in Appeal No. 16 of 2000 by the Deputy Collector, Viramgam Prant; and the order dated 20th September 2001 passed by the Collector, Ahmedabad in Review Case No. 4 of 2000, and remanding the matter to the Collector, Ahmedabad, for considering the observations made in the order dated 10th December 2002 in Revision Application filed by the heirs and legal representatives of deceased Dayaji Galaji who claim to have jividar rights in respect to the land bearing Survey No. 269/1, 269/2, 269/3 and 269/4 situate at Sola, Taluka-Dascroi, District-Ahmedabad, and taking decision afresh thereon.

3. So far as the present petitioners are concerned, they are concerned with the following lands bearing survey numbers :

Special Civil Application No. Survey Number/s.

11603 of 2004	722
11859 of 2004	486/2/A
11875 of 2004	484/1, 484/2 & 486/1/A.
12318 of 2004	542
12333 of 2004	490/1
12334 of 2004	490/3, 491/1 & 491/2.
12336 of 2004	490/2
12340 of 2004	243/1
12343 of 2004	487
15467 of 2004	491/3
15774 of 2004	627.

4. Few facts are necessary for the purpose of determination of the Special Civil Applications.

5. All the petitioners claim to be purchasers of the lands in question from their respective landowners by registered sale deeds. Proceedings came to be initiated under the provisions of Bombay Service Inam (Useful to Community) Abolition Act, 1953 {hereinafter referred to as "the Act"} for the purpose of taking over management of the lands cultivated by jividars by the Government and an order came to be passed on 6.11.1952 whereby taking over of management of 31 Survey numbers of land inclusive of lands in question came to be passed, as it was found that services of the Jividars to whom the said lands were granted were no longer required by the Government. Necessary mutation Entry No. 1811 was effected in the Village Form No.6 on 14.12.1952 and the same came to be certified on 25.1.1953. After the aforesaid order of the Government taking over the management of the lands in question, the aforesaid lands were entered under the head of "Government Fallow Land" and mutation Entry No. 2243 was effected on 13.6.1956 in Village Form No.6 and the said Entry also came to be certified.

5.1. It appears from the record that being aggrieved

and dissatisfied with the order passed by the Government dated 6.11.1952 taking over management of the lands, mutation Entry No. 1811 came to be challenged by the heirs of Dayaji Fulaji who was a Jividar, Appeal No. 1 of 1994 came to be filed before the District Collector,Ahmedabad. The District Collector, Ahmedabad by his order dated 21.1.1994 partly allowed the said appeal and set aside the order dated 6.11.1952 passed by the Prant Officer, Viramgam Prant and also the mutation Entry No. 1811 and mutation Entry No. 2243 and directed the Prant Officer, Viramgam Prant to render his decision after giving an opportunity of being heard and leading evidence to the appellants in the said appeal in accordance with standing orders of the Government. It is the case of petitioners that the lands which are purchased by the petitioners also were included in the lands which were subject matter of dispute in the aforesaid appeals. On remand, the proceedings were numbered as Case No. 267 of 1994 before the Deputy Collector, Viramgam Prant, Ahmedabad. It is the case of the petitioners that the Deputy Collector, Viramgam Prant held a detailed inquiry and after considering the observations made by the District Collector in his order dated 21.1.1994, the Deputy Collector by his order dated 24th March 1995 held that the Jividars named in the said order inclusive of the original owners of the lands in question were private owners of the lands as the lands were not granted to them as Service Inams under the provisions of the said Act and as such they were under an obligation to pay land revenue and other Government taxes. Thus, ultimately the Deputy Collector held that the original holders have become authorised holders/occupants of the lands in question under the provisions of the said Act. It is the case of the petitioners that the order passed by the Deputy Collector, Viramgam Prant dated 24th March 1995 became final as the same has never been challenged by anybody and/or the said order is not the subject matter of suo motu revision by any authority under the provisions of the said Act.

5.2. It is further the case of the petitioners that necessary mutation Entry was also made in the Village Form No.6 on 8.3.1997 being Entry No. 6418 giving effect to the order passed by the Deputy Collector, dated 24.3.1995. It is also the case of petitioners that the said mutation Entry came to be certified on 24.9.1997.

5.3. It appears from the record that the owners of land bearing Revenue Survey No. 269/1 to Survey No. 269/4 of Village Sola who were not declared as

'authorised holders/occupants' of the aforesaid lands by the Deputy Collector, Viramgam Prant by his order dated 24th March 1995, preferred Appeal No. 27 of 1998 before the Collector, Ahmedabad, challenging the said order dated 24th March 1995 passed by the Deputy Collector, Viramgam Prant, Ahmedabad, as by the order dated 24th March 1995 the Deputy Collector, Viramgam Prant has passed the order with regard to owners of only 16 survey numbers who were declared as 'authorised holders/occupants of the lands and the Collector, Ahmedabad, by his order dated 4.1.1999 dismissed the said Appeal No. 27 of 1998. Being aggrieved and dissatisfied with the order passed by the Collector, Ahmedabad, dated 4.1.1999 in Appeal No. 27 of 1998, the heirs of Dayaji Galaji who were claiming to have ownership rights in respect to Survey Nos. 269/1 to 269/4 preferred Revision Application No. 114 of 1999 before the Secretary, Revenue Department (Appeals), State of Gujarat, who by his judgment and order dated 15th December 1999 partly allowed the said revision application quashing and setting aside the order passed by the Deputy Collector, Viramgam dated 24th March 1995 and also the order passed by the Collector, Ahmedabad, dated 4.1.1999 in Appeal No. 27 of 1998 by remanding the matter to the Deputy Collector, Viramgam Prant. It is the case of the petitioners that the Secretary (Appeals) by judgment and order dated 15th December 1999 directed the Deputy Collector, Viramgam Prant to decide the case of the heirs of deceased Dayaji Galaji who were concerned with land bearing Survey Nos. 269/1 to 269/4, considering the order passed by the Deputy Collector, Viramgam Prant in respect to lands of 16 survey numbers in question. That thereafter on remand the Deputy Collector, Viramgam Prant, Ahmedabad passed an order on 30th June 2000 in Appeal Case No. 16/2000 in favour of heirs of deceased Dayaji Galaji and passed an order with regard to land bearing Survey No. 269/1 to 269/4 by holding that the heirs of Dayaji Galaji are also authorised holders/occupants under the provisions of the aforesaid Act.

5.4. It appears from the record that the order passed by the Deputy Collector, Viramgam Prant, Ahmedabad dated 30th June 2000 came to be taken under suo motu review/revision by the Collector, Ahmedabad, who by his judgment and order dated 20th September 2001 quashed and set aside the order passed by the Deputy Collector, Viramgam Prant, Ahmedabad, dated 30th June 2000. Being aggrieved and dissatisfied with the order passed by the Collector, Ahmedabad, dated 28th September 2001 in Review Case No. 4 of 2000 in quashing and setting aside the

order passed by the Deputy Collector, Viramgam Prant, Ahmedabad, dated 30th June 2000, the heirs of deceased Dayaji Galaji preferred Revision Application No. 24 of 2001 before the Secretary (Appeals), Revenue Department, State of Gujarat, who by his judgment and order dated 10th December 2002, has partly allowed the said revision application. However, he quashed and set aside all the orders with regard to all the 31 survey numbers which were the subject matter of Entry No. 1811 by quashing and setting aside the order passed by the Collector, Ahmedabad dated 22.1.1994; the order passed by the Deputy Collector, Viramgam Prant, dated 24th March 1995; the order passed by the Collector, Ahmedabad dated 4.1.1999; the order passed by the Deputy Collector, Viramgam Prant dated 30th June 2000; and also the order passed by the Collector, Ahmedabad dated 28th September 2001, and directed the Deputy Collector, Viramgam Prant to decide and dispose of cases with regard to all the 31 survey numbers which were subject matter of Entry No. 1811 afresh after giving an opportunity to all the concerned persons and considering the revenue record. Being aggrieved and dissatisfied with the judgment and order dated 10th December 2002 passed by the Secretary, Revenue Department (Appeals), in Revision Application No. 24 of 2001, the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

6. Shri AJ Patel, learned advocate appearing on behalf of the petitioners, as assailed the order passed by the Secretary (Appeals) dated 10th December, 2002 in Revision Application No. 24 of 2001 on the following grounds;

(1) The impugned order passed by the Secretary (Appeals) is in violation of principles of natural justice as before passing the said order dated 10th December 2002 and in cancelling the order dated 24th March 1995 passed by the Deputy Collector, Viramgam Prant which was in favour of the petitioners, no opportunity has been given to the petitioners.

(2) When the order passed by the Deputy Collector, Viramgam Prant dated 24th March 1995 by which the original landowners of the lands (16 survey numbers) in question came to be declared as 'authorised holders/occupants' and the said order has become final meaning thereby that there is no appeal preferred against the said order and/or the same is not taken under suo motu revision by

the higher authority, the Secretary (Appeals) ought not to have set aside the said order dated 24th March 1995 in respect to the lands of 16 survey numbers in question.

(3) When the Revision Application No. 24 of 2001 was filed by the heirs of Dayaji Galaji with respect to Survey No. 269/1 to 269/4 only, the Secretary (Appeals) ought not to have quashed and set aside the orders with regard to other survey numbers (16 in number) in question which was not the subject matter of the appeal before the Collector, Ahmedabad in Appeal No. 27/1998 and/or Review Case No. 4 of 2000 (order dated 28th September 2001) and therefore the Secretary (Appeals) ought not to have set aside the orders in favour of the petitioners and/or their original landowners with regard to 16 survey numbers in question.

(4) In view of the fact that now the Bombay Service Inam (Useful to Community) Abolition Act, itself is repealed, no proceeding can be initiated now.

7. On the basis of the aforesaid contentions, Shri AJ Patel, learned advocate appearing on behalf of the petitioners, has requested to allow all the Special Civil Applications by quashing and setting the order passed by the Secretary (Appeals), Revenue Department, dated 10th December 2002 in Revision Application No. 24 of 2001, in so far as quashing and setting aside the orders passed in favour of the petitioners and/or their original landowners with regard to 16 survey numbers in question.

8. Shri AD Oza, learned Government Pleader appears on behalf of the respondents. It is submitted by him that Entry No. 1811 dated 14.12.1952 was in respect to and with regard to all 31 survey numbers inclusive of 16 Survey numbers in question. Therefore it is submitted that when in respect to 16 survey numbers only, the order was passed by the Deputy Collector, Viramgam Prant, Ahmedabad, dated 24th March 1995 declaring the Jividars of those lands only as 'authorised holders/occupants' and with regard to remaining survey numbers, the order was not passed by the Deputy Collector, Viramgam Prant, declaring the erstwhile owners to be authorised holders/occupants, when the matter was remanded by the Secretary (Appeals) by his judgment and order dated 15.12.1999 to the Deputy Collector, Viramgam Prant, Ahmedabad to decide the question with regard to all the 31 survey numbers together and the Deputy Collector has

decided the question with regard to only Survey Nos. 269/1 to 269/4 on the ground of parity the dispute with regard to all the 31 survey numbers are required to be decided together, and therefore the order passed by the Secretary (Appeals) dated 10th December 2002 in aforesaid Revision Application No. 24 of 2001 directing the Deputy Collector, Viramgam Prant to decide and dispose of the proceedings/dispute with regard to all the 31 survey numbers together after giving opportunity to all the concerned parties by quashing and setting aside all the orders which are passed by the authorities below earlier, it cannot be said that there is any illegality committed by the Secretary (Appeals). It is further submitted that as the matter is remanded to the Deputy Collector, Viramgam Prant, ample opportunity will be given to the petitioners and the original landowners and therefore there will not be any prejudice to the petitioners and therefore requested not to entertain the Special Civil Application.

9. Heard the learned advocates appearing on behalf of the parties. The dispute in the present Special Civil Applications are with regard to 16 Survey numbers whose particulars are given hereinabove. There were in all 31 survey numbers for which Entry No. 1811 was made on 14.12.1952. As emerges from the record, heirs of Dayalji Fulaji, Jividar and others filed L.V. Appeal No. 1/1994 before the District Collector, Ahmedabad, and the District Collector, Ahmedabad by his order dated 21.1.1994 partly allowed the said Appeal and set aside the order dated 6.11.1952 passed by the Prant Officer, Viramgam Prant and mutation Entry No. 1811 and mutation Entry No. 2243 directing the District Collector, Viramgam Prant, Ahmedabad to take a decision after giving an opportunity of being heard and leading evidence and considering the observations made in the order dated 21.1.1994. It is required to be noted that the order passed by the District Collector, Ahmedabad, dated 21.1.1994 has become final inasmuch as the same has not been taken under suo motu revision and/or against which no appeal came to be filed. On remand, the Deputy Collector, Viramgam Prant, by order dated 24th March 1995 passed an order with regard to 16 survey numbers mentioned in the operative portion of the order which is at page 98 of this compilation declaring that the said lands are not given to the occupants as Service Inam and they are of the private ownership and declared the erstwhile owners as authorised holders/occupants under the relevant provisions of the Act. It is also required to be noted at this stage that the order passed by the Deputy Collector, Viramgam Prant dated 24th March 1995 in

respect of survey numbers mentioned in the said order (16 in number) had also become final inasmuch as the said order is neither taken under suo motu review and/or no appeal has been filed against the said order in respect to the 16 survey numbers whose reference has been made in the said order dated 24th March 1995. It is only in respect to the lands bearing survey Nos. 269/1 to 269/4, that the heirs of Dayalji Galaji, the jividar, initiated proceedings challenging the order passed by the Deputy Collector, Viramgam Prant, Ahmedabad 24th March 1995 insofar as it is not declaring them as private owners of the aforesaid four survey numbers and not declaring them as authorised holders/occupants in respect to the aforesaid 4 survey numbers only, i.e. Survey Nos. 269/1 to 269/4, which went to the Secretary (Appeals) being Revision Application No. 24 of 2001. Therefore, in a revision application filed by the heirs of Dayalji Galaji with respect to land bearing Survey Nos. 269/1 to 269/4 only, the Secretary (Appeals) ought not to have set aside the orders with regard to other survey numbers as the dispute with regard to other survey numbers was not before the revisional authority, i.e., Secretary (Appeals). Under the circumstances, the impugned judgment and order dated 10th December 2002 in Revision Application No. 24/2001 in respect to the other survey numbers other than the land bearing Survey Nos. 269/1 to 269/4 is without jurisdiction and beyond the scope of the main revision application No. 24/2001 and the same is required to be quashed and set aside.

10. It is also required to be noted, that the order dated 21.1.1994 passed by the Collector, Ahmedabad, and order dated 24th March 1995 passed by the Deputy Collector, Viramgam Prant, are in favour of erstwhile owners of land in question of 16 survey numbers, and as on today the said orders have become final inasmuch as neither the said orders are taken under suo motu review/revision and/or no appeal is filed against the said orders, and the aforesaid 2 orders also came to be set aside by the Secretary (Appeals) by impugned judgment and order dated 10th December 2002 in Revision Application No. 24/2001 without giving any opportunity to the petitioners and/or their erstwhile owners from whom the petitioners have purchased the lands in question.

10.1. Under the circumstances, the impugned judgment and order dated 10th December 2002 in Revision Application No. 24 of 2001 is in violation of principles of natural justice. Therefore, the impugned order, quashing and setting aside the order passed by the Collector, Ahmedabad, dated 21.1.1994 as well as the

order passed by the Deputy Collector, Viramgan Prant, Ahmedabad dated 24th March 1995 in respect to 16 survey numbers in question, is required to be quashed and set aside.

11. For the reasons stated above, the impugned judgment and order dated 10th December 2002 passed in Revision Application No. 24 of 2001, relating to quashing and setting aside of the order passed by the Collector, Ahmedabad dated 21.1.1994 and the order passed by the Deputy Collector, Viramgam Prant, dated 24th March 1995 in respect to land of 16 survey numbers mentioned therein, is quashed and set aside. However, it is made clear that it will be open for the appropriate authorities either to take the order passed by the Collector, Ahmedabad, dated 21.1.1994 and the order passed by the Deputy Collector, Viramgam Prant, dated 24th March 1995 in suo motu revision and/or by way of appeal before the appropriate authority, if it is permissible under the law and in accordance with law. It is clarified that the appropriate authority is not precluded from taking the aforesaid orders either under suo motu revision and/or challenging the same before the appellate authority, if it is permissible under the law. As and when such proceeding is initiated, it will be open for the concerned persons, inclusive of the petitioners, to take all legal contentions available to them under the law. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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